

Department of Justice

§ 8.8

property pursuant to process issued by a state or local judicial authority, and notifies a seizing agency of the impending release of such property, the seizing agency may seek and obtain a federal seizure warrant in anticipation of a state or local judicial authority releasing the asset from state process for purposes of federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

§ 8.4 Inventory.

The seizing agent shall prepare an inventory of any seized property.

§ 8.5 Custody.

(a) All property seized for forfeiture by ATF, DEA, or FBI shall be delivered to the custody of the U.S. Marshals Service (USMS), or a custodian approved by the USMS, as soon as practicable after seizure, unless it is retained as evidence by the seizing agency.

(b) Seized U.S. currency (and, to the extent practicable, seized foreign currency and negotiable instruments) must be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(1) If the seized currency has a value less than \$5,000 and a supervisory official within a U.S. Attorney's Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise;

(2) If the seized currency has a value greater than \$5,000 and the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, determines in writing that the currency is reasonably likely to serve a significant, independent, tangible evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise.

(c) Seized currency has a *significant independent, tangible evidentiary purpose*

as those terms are used in § 8.5(b)(1) and (b)(2) if, for example, it bears fingerprint evidence, is packaged in an incriminating fashion, or contains a traceable amount of narcotic residue or some other substance of evidentiary significance. If only a portion of the seized currency has evidentiary value, only that portion should be retained; the balance should be deposited.

§ 8.6 Appraisal.

The seizing agency or its designee shall determine the domestic value of seized property as soon as practicable following seizure.

§ 8.7 Release before claim.

(a) After seizure for forfeiture and prior to the filing of any claim, ATF's Chief, Asset Forfeiture and Seized Property Branch, or designee, the appropriate DEA Special Agent in Charge, or designee, or the appropriate FBI Special Agent in Charge, or designee, whichever is applicable, is authorized to release property seized for forfeiture, provided:

(1) The property is not contraband, evidence of a violation of law, or any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or federal law, and does not have a design or other characteristic that particularly suits it for use in illegal activities; and

(2) The official designated in paragraph (a) of this section determines within 10 days of seizure that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(b) Further, at any time after seizure and before any claim is referred, such seized property may be released if the appropriate official of the seizing agency determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

§ 8.8 Commencing the administrative forfeiture proceeding.

An administrative forfeiture proceeding begins when notice is first published in accordance with § 8.9(a), or the

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first personal written notice is sent in accordance with § 8.9(b), whichever occurs first.

§ 8.9 Notice of administrative forfeiture.

(a) *Notice by publication.* (1) After seizing property subject to administrative forfeiture, the appropriate official of the seizing agency shall select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and intent to forfeit and sell or otherwise dispose of the property:

(i) Publication once each week for at least three successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or

(ii) Posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

(2) The published notice shall:

(i) Describe the seized property;

(ii) State the date, statutory basis, and place of seizure;

(iii) State the deadline for filing a claim when personal written notice has not been received, at least 30 days after the date of final publication of the notice of seizure; and

(iv) State the identity of the appropriate official of the seizing agency and address where the claim must be filed.

(b) *Personal written notice.* (1) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the seizing agency, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(2) *Content of personal written notice.* The personal written notice sent by the seizing agency shall:

(i) State the date when the personal written notice is sent;

(ii) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;

(iii) State the date, statutory basis, and place of seizure;

(iv) State the identity of the appropriate official of the seizing agency and the address where the claim must be filed; and

(v) Describe the seized property.

(c) *Timing of notice.* (1) *Date of personal notice.* Personal written notice is sent on the date when the seizing agency causes it to be placed in the mail, delivered to a commercial carrier, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by § 8.9(b) shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by a state or local law enforcement agency if the property was turned over to a federal law enforcement agency for the purpose of forfeiture under federal law).

(2) *Civil judicial forfeiture.* If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under paragraph (c)(1) of this section.

(3) *Criminal indictment.* If, before the time period for sending notice under paragraph (c)(1) of this section expires, no civil judicial forfeiture action is filed, but a criminal indictment or information is obtained containing an allegation that the property is subject to forfeiture, the seizing agency shall either:

(i) Send timely personal written notice and continue the administrative forfeiture proceeding; or

(ii) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to the person having the right to immediate possession unless the U.S. Attorney takes the steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(4) *Subsequent federal seizure.* If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person from whom the property is seized within the time period for providing notice under paragraph (c)(1) of this section, then any administrative forfeiture proceeding against the property may commence if: